

Chapter 1 Identifying and Screening Possible Services

Chapter 1, Section 1

About this chapter

1.1.1 Why competitive contracting?

The statute, RCW 41.06.142, enacted as part of the Personnel Systems Reform Act (PSRA) of 2002 allows any agency to purchase services, including services that have been customarily and historically provided by state employees. The agency may contract with individuals, nonprofit organizations, businesses, employee business units (EBUs), or other entities. The agency's decision to competitively contract a specific service will likely stem from one of these driving factors:

1. The agency has applied re-engineering and continuous improvement to the service but has not been able to deliver required levels of performance commensurate with the agency's investment of resources and funding.
2. The agency's need to acquire access to skills, competencies, expertise, and innovative technologies that the agency itself cannot sustain.
3. The need to leverage capacities and economies of scale, which are not available within the agency, but are available from suppliers who are capitalized and specialized in providing the same service to others.
4. Re-allocation and redeployment of the agency's limited resources towards focused mission related services that support the state's priorities of government.
5. Direction from the Governor or Legislature.

1.1.2 Preliminary considerations

Leadership commitment

It is absolutely vital that the effort to compete a service be properly staffed, funded, and supported by agency senior management. Efforts to engage in competitive contracting may be opposed by constituencies, both from inside and outside of the agency. Proactive and on-going communication by the agency with employees, customers, other agencies, etc. at all phases is critical to the success of any competitive contracting effort. Ultimately the results of a competitive contracting solicitation and award are the responsibility of the agency director.

Consider all factors

In identifying a candidate service for consideration, the agency's sole criteria should not be on the amount budgeted or the size of potential savings. Other factors should be weighed, like: risk, the amount of effort and investment already expended to improve the service, staff readiness, and the level of integration the services has with other services (both within and across agencies).

Likelihood of improper or failed performance by the service provider

Potential service disruption resulting from improper or failed performance is an important factor in determining initial candidates for competition, especially for

services that have high visibility and impact to the public. Guidance for assessing risk is included in this manual and should be used to properly quantify and qualify any such risk (see Chapter 4). Additionally, the agency should begin competitive contracting on a scale equal to its experience with the process so as to increase the likelihood of success.

Degree of integration with other services

Services that are primarily stand-alone, and have budgets that are specific to that service, are typically easier to competitively contract than ones that are integrated with other state government operations. Integrated services require more analysis and coordination.

Readiness of employees to participate

The agency needs to consider the readiness of their employees to participate in this effort. Not only to offer alternatives and submit bids, but also to evaluate bids, prepare a cost analysis, determine a competitive market, etc.

Collective bargaining agreements

If a bargaining unit may be involved, the agency should work closely with its liaison at the LRO to ensure it is in compliance with any obligations required under one or more collective bargaining agreements and applicable labor laws.

1.1.3 Key components of this chapter

This chapter introduces the process for identifying, screening and prioritizing services for competitive contracting. The basic steps involved in this process include:

- **Reviewing activities** - In this step the agency focuses on reviewing existing activities currently being performed. This review involves an examination of services for their performance, staffing, capital requirements, mission, etc.
- **Breaking down activities into discrete services** - In this step, the activities are examined further to determine which specific services are available in the marketplace and what potential for efficiency gains or savings exist.
- **Prioritizing services for competitive contracting** - The agency's competitive contracting effort may have limited resources; therefore, one rationale for prioritization involves singling out those services that represent the best return on the agency's investment.

Other considerations may include:

- The number of competitors (at least 2) per the requirements of WAC 236-51-100. (More competitors = more competition = greater potential for savings with less risk)
- Market strength and stability
- Potential financial impact
- Ease of implementation
- Risk

- **Pre-competition assessment** - These activities involve collecting service volume, cost, and marketplace data.

1.1.4 An overview of contracting authorities

The agency should review the following section to understand the interrelationship among the state's contracting authorities:

The Legislature grants authority for the procurement of services within the state via a number of statutes. Furthermore, certain agencies with procurement authority develop additional rules, policies and procedures for the specific types of contracts over which they have authority. In the past, the nature of the services (or products) being procured have determined the applicable laws and rules to be applied.

However, competitive contracting laws and rules set forth in chapter 41.06 RCW and chapter 236-51 WAC have added new requirements to be carefully considered prior to contracting for services. Competitive contracting laws and rules apply to solicitations for all types of services customarily and historically provided by state employees, except (1) as described in RCW 41.06.142(3) and 41.06.070; (2) in the case of emergency purchases as described in WAC 236-51-005; and (3) if state employees will not be displaced.

The state's purchasing authority for services is organized into seven major categories

- **Personal Service Contracts** - Chapter 39.29 RCW
- **Client Service Contracts** - Chapter 39.29 RCW
- **Information Technology Equipment and Services** - Chapter 43.105 RCW
- **Goods and Purchased Services** - Chapter 43.19 RCW
- **Public Works (including Engineering and Architecture)** - Chapters 28B.10.350, 39.04, 39.80 and 43.19 RCW
- **Highway Design and Construction** - Chapters 39.80 and 47.28 RCW
- **Printing Services** - Chapter 43.78 RCW.

The information below covers contracts issued pursuant to two of the above service categories: Chapter 39.29 RCW (personal service/client service) and Chapter 43.105 RCW (Information Technology). For all other types of contracts referenced above, consult the appropriate agency with authority over the particular type of service contract.

Personal and client service contracts

The legal authority for personal and client service contracts is contained in Chapter 39.29 RCW. Regulations for implementation are set forth in Chapter 15 of the Office of Financial Management (OFM) State Administrative and Accounting Manual, which is found at the following website: <http://www.ofm.wa.gov/policy/15.htm>

Personal services are professional or technical services provided by a consultant (contractor) to accomplish a specific study, project, task or other work statement.

If the conditions of competitive contracting apply to personal services being proposed for purchase, then the competitive contracting bid, complaint, and appeal process is used. If the personal service contract resulting from the competitive contracting process is awarded to the contractor (not the Employee Business Unit / EBU), the contract is subject to filing with and/or reporting to OFM just as all other personal service contracts awarded under the competitive solicitation requirements of Chapter 39.29 RCW. In this example, the competitive contracting bid process is used to award the contract, then, if the contract is not awarded to the EBU, the personal service filing and contract management requirements apply.

A further significant change is that the categories of personal service contracts exempt from competition and filing under RCW 39.29.040 are NOT exempt from competitive contracting under RCW 41.06.142. Therefore, if the types of exempt services are those customarily and historically provided by state employees, and employees would be displaced, they are subject to the competitive contracting bid process for award. Contracts exempt under RCW 39.29.040 are: client services; architectural engineering contracts; services for a standard fee; intergovernmental agreements; contracts for services where the fee is established by tariff set by the Utilities and Transportation Commission or other public entity; contracts of less than \$5,000 with the contractor within a fiscal year; collaborative research contracts; contracts for expert witness services; contracts for bank supervision awarded by the Department of Financial Institutions; and interpreter services/interpreter broker services awarded for clients of the Department of Social and Health Services. Contracts designated by OFM as exempt are also included under this change.

Information technology contracts

Chapter 43.105 RCW defines specific authorities and responsibilities for the Information Services Board (ISB), the Department of Information Services (DIS), and the heads of individual agencies.

The ISB has the power and duty to develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of radio spectrum, and confidentiality of computerized data. It also has the power and duty to purchase, lease, and rent or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent or otherwise acquire, dispose of, and maintain equipment, proprietary software and purchased services.

Agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. See <http://dis.wa.gov/portfolio/> for the documents referenced in this section. For the latest information regarding competitive acquisition of IT goods and services, see Appendix A of the IT Investment Standards also located at the above web site.

Some IT purchases require ISB or DIS approval. Such approval must be obtained prior to release of any solicitation and prior to conducting the acquisition.

ISB approval is required under one or more of the following circumstances

- The investment is placed under ISB oversight by legislative proviso
- The ISB places the investment under its oversight
- The investment was rated oversight level 3 or is part of a project that was rated oversight level 3, per the oversight matrix in the ISB IT Investment Standards
- ISB approval may be required if the investment cost exceeds the agency director's delegated authority.

DIS approval is required under one or more of the following circumstances

- The investment cost is more than the agency director's delegated authority
- The acquisition process to be used is a technology assessment
- The investment was rated oversight level 2 or is part of a project that was rated oversight level 2, per the oversight matrix in the ISB IT Investment Standards
- The investment is exempted from delegated authority, even if the investment cost is within the agency director's delegated authority. The ISB Investment Policy lists the types of IT investments that are exempted from delegated authority

State agency competitive contracting acquisitions for IT-related services are subject to the to the Information Technology Investment Policy and all other requirements arising under chapter 43.105 RCW. For guidance on vendor complaints concerning IT purchases, refer to section 6.2.1 of this manual *Complaints Relating to IT Technology Solicitations* and the *Information Services Board's IT Investment Standards*. Once the procedures described there have been exhausted, appeals are governed by RCW 41.06.142 and chapter 236-51 WAC.

Specific questions regarding compliance and requests for assistance should be directed to your agency's DIS Senior Technology Management Consultant. A list of agency consultant assignments is available online at: <http://dis.wa.gov/portfolio/201S.htm#appendixE>

When state employees would not be displaced by an award of a contract

Competitive contracting requirements also apply even when employees are not being displaced. When services that have customarily and historically been provided by state employees are being contracted and state employees are NOT being displaced, agencies will comply with the applicable procurement law for the type of service. But prior to conducting the competitive process, agencies must also ensure that:

- The invitation for bid or request for proposals contains measurable standards for the performance of the contract
- The department, agency, or institution of higher education has established a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards, and to cancel contracts that do not meet those standards

- The department, agency, or institution of higher education has determined the contract results in savings or efficiency improvements. The contracting agency must consider the consequences and potential mitigation of improper or failed performance.

Chapter 1, Section 2

Identifying possible services for competitive contracting

The tasks discussed below describe a comprehensive process for identifying possible services for competition. It is not necessary to complete all of the tasks in the identification and screening process outlined in this chapter prior to initiating competitions. At a minimum though, agencies are encouraged to identify potential services for competitive contracting as early as possible to allow ample time for re-engineering or process improvements to be performed (if not done so already) prior to any decision to compete a service.

1.2.1 Reviewing activities

An agency's strategic plan, activity inventory, business plans, and/or budget are the primary sources for the agency's review of activities currently being performed. Figure 3 is a hypothetical activity inventory for a Vehicle Maintenance Service which will be used to illustrate how just such a review would take place.

Note: The example is for illustration only and does not represent any current or future plans, intent, or policy.

Vehicle Operations - Vehicle Maintenance Service

Figure 3

Agency Service
Activity Inventory

Vehicle Operations - Vehicle Maintenance Service Agency Activity Inventory by Agency							
Appropriation Period: xxxx Activity Version: xxxx Sup w/ Alloc & Activities							
Agency: 1xx - Dept of XYZ							
The vehicle maintenance service section maintains and repairs permanently assigned vehicles as well as vehicles owned by the various state agencies.							
Statewide Results Area: Improve the ability of State Government to achieve its results efficiently and effectively							
Category: Provide support services to government agencies.							
FY 2004				FY 2005			
TOTAL	GFS	OTHER	FTE's	TOTAL	GFS	OTHER	FTE's
\$817,000	\$0	\$817,000	5.1	\$816,000	\$0	\$816,000	5.1
Expected Results: Cost Effectiveness - Minimize maintenance costs and perform services below market labor rates.							

1.2.2 Breaking down activities into discrete services

In the next step of identifying potential services, the agency should examine each activity in detail to determine if possible services for competitive contracting are imbedded within. This unbundling of an activity will help simplify the analysis later on, particularly in the determination of a competitive market. In *Figure 4*, the Vehicle Maintenance Activity has been unbundled. Once unbundled, a simple test can be applied to each service to determine if it is a likely candidate for competitive contracting. It is referred to as a “yellow pages test”. If a service can be found on a standard yellow pages listing, then it is a likely candidate for consideration.

Note: WAC 236-51-100 gives responsibility for the determination of a competitive market to the agency. Figure 4 of this manual introduces one method to help agencies make this determination (also see section 1.2.4). Agencies are required to describe to potentially displaced employees their determination of this competitive market in the notification described in WAC 236-51-200. WAC 236-51-710 (3) (b) allows displaced or potentially displaced employees to appeal an agency’s determination of a competitive market.

Activity: Vehicle Maintenance

Figure 4

*Competitive
Market Analysis
(hypothetical data)*

Service	FTE's	Budget	# of Local Providers	Candidate
Maintenance scheduling	.1	\$8,000	3	Yes
Parts procurement	.5	\$40,000	3	Yes
Purchased parts	n/a	\$48,000	n/a	Purchased goods
Sub-functions percentage of preventative maintenance service				
Preventative maintenance	2.0	\$320,000	See below	Yes
Tune-ups		10%	31	Yes
Lube, oil, & filter change		80%	18	Yes
Safety inspection		5%	18	Yes
Emission testing		5%	10	Yes
Sub-functions percentage of corrective maintenance service				
Corrective maintenance	2.5	\$400,000	See below	Yes
Brakes		45%	49	Yes
Suspension & drive train component replacement		5%	19	Yes
Engine diagnostic analysis		5%	10	Yes
Electrical repairs		5%	17	Yes
Tire mounting & balance		40%	39	Yes
Total	5.1	\$816,000		

1.2.3 Prioritize services for competitive contracting

Scope

Once a service has been identified as a potential candidate, the following questions should be asked:

- Is the service being performed support of the agency's mission, goals, and the state's priorities of government?

If the answer to the first bulleted item is no:

Why is the service being performed at all?

If the answer to the first bulleted item is yes:

- Is the agency the best provider?
- Are considerable investments in capital or labor required to sustain performance or efficiencies?
- Do other government entities utilize a different model for delivery or performance of the service?

This is by no means a complete list, but it provides a starting point for agencies to consider - **what** it is they do, **how** well they are doing it, **who** should be doing it, or **why** it should be done at all.

Number of competitors

For Figure 4, a survey of the marketplace was conducted to identify the number of service providers for each service. This helps to prioritize likely candidates and eliminate others. In the vehicle maintenance example the entire activity and all services are candidates for competitive contracting.

Potential financial impact

The more of a savings potential, the greater a priority it should be to consider the service for competitive contracting. The agency should go beyond direct costs and also determine the impact to agency overhead as a result (see Chapter 3).

Value creation

Competitive contracting opportunities may each generate varying amounts of value based on results versus costs (see 2.1.3).

Ease of implementation

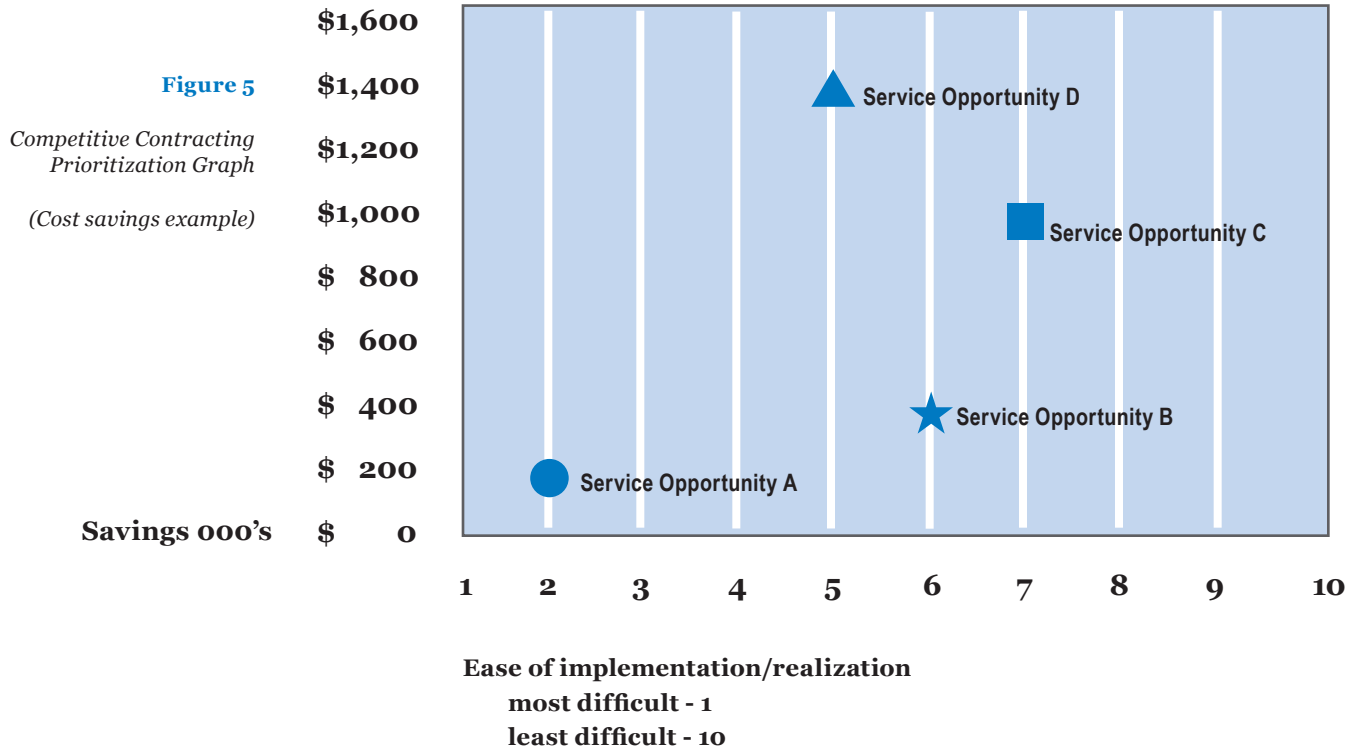
The level of effort required by the agency should also be used to prioritize the number of competitive contracting opportunities. For instance, the number of employees potentially displaced, capital assets to disposition, employee readiness, etc.

Risk

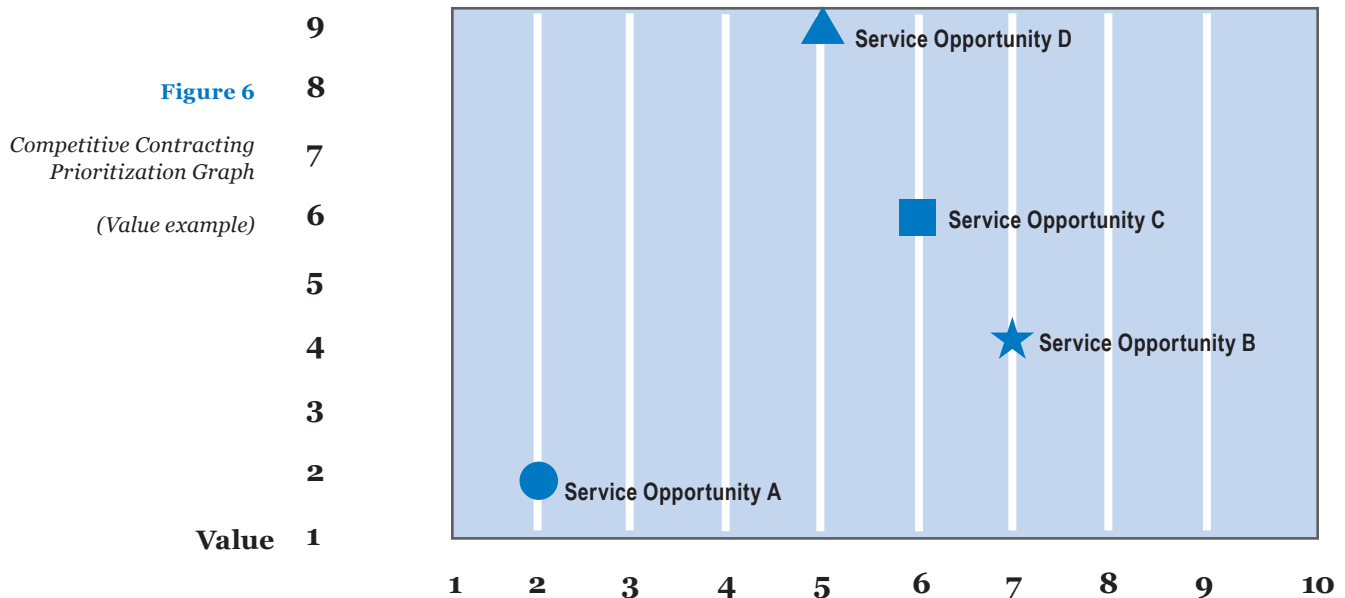
The agency should employ risk assessment techniques at this stage in the competitive contracting process so the agency can evaluate different opportunities relative to risk (see Chapter 4).

Figures 5 and 6 can be a useful tool for agencies to prioritize services for competitive contracting based on either cost savings or value creation (left axis) when compared to the relative effort required to make it happen. In each case, Service Opportunity “D” would be the best one to pursue.

Competitive Contracting Prioritization Graph



Competitive Contracting Prioritization Graph



1.2.4 Pre-competition assessment

After the agency has prioritized and decided which competitive contracting opportunities to pursue, additional analysis may be necessary to prepare for the definition of business requirements (see Chapter 2). This section lists several methods that can be employed at this stage to facilitate this assessment.

Market analysis

The agency may have no knowledge of the market for this particular service; it must educate itself before it can embark on a competitive contracting solicitation. The agency can assign the task of a market analysis to their internal procurement/contracting group, hire GA's Office of State Procurement (OSP), or contract with a consultant. Here are some considerations when conducting a market analysis:

- Is the scope of the services or activities under consideration grouped properly for market consideration?
- Is the market capable of providing the services under consideration?
- How are services, such as those being considered, typically costed and billed by service providers (e.g. activity-based or unit priced, etc.)?
- What are the typical risks or concerns associated with the service being considered as viewed by the service provider community?
- What issues would limit or improve the market's ability and willingness to respond to a solicitation? and
- What additional issues might have to be considered prior to a decision to compete a service under consideration?

Peer benchmarking

Other government entities or private enterprises may have competitive market experience with the identified service. Peer benchmarking is simply studying the experience of others to determine realistic expectations for success along with the likelihood for failure. Peer benchmarking can be initiated by the agency or facilitated by a consultant. GA's Office of State Procurement's Professional Services Solutions Team has a number of external competitive contracting consultants under contract with just such experience (see <http://www.ga.wa.gov/PCA/Ps2/>).

Activity based costing (ABC)

Activity Based Costing is a method for attributing indirect costs based on the activities that drive cost. This approach is in contrast to traditional accounting methods which pool and arbitrarily allocate indirect costs. Agencies can employ ABC analysis to understand the relationship between the service and cost drivers to more accurately develop an understanding of the cost for the current service.

Volume analysis

The agency may need to evaluate the volume of the service so as to properly represent it to potential bidders. A comparison of historical numbers may be enough; however additional consideration may include what the future growth outlook is and/or to what the service's current market share is compared to its competitors.